

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16037 of John E. Yellen and Alison S. Brooks, as amended, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable percentage of lot occupancy requirements, the existing nonconformity will increase and will create a new nonconforming rear yard and closed court [Paragraph 2001.3(a), (b) and (c)], a variance to abandon required parking (Subsection 2100.10), a variance from the allowable lot occupancy requirements (Subsection 403.2), a variance from the rear yard requirements (Subsection 404.1), and a variance from the minimum area of a closed court (Subsection 406.1) for the addition, alteration and conversion of a single-family row dwelling into a two-family flat in an R-4 District at premises 810 E Street, S.E. (Square 925, Lot 804).

HEARING DATES: May 10, 1995 and November 6, 1996

DECISION DATE: December 4, 1996

ORDER

PRELIMINARY MATTERS:

The application was originally advertised for hearing on May 10, 1995. In the original advertisement, the application was for three variances, a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable percentage of lot occupancy requirements [Subsection 2001.3(a)]; a variance to abandon required parking (Subsection 2100.10), and a variance to allow a dwelling unit in an accessory building (Subsection 331.1).

The applicant submitted a letter dated April 25, 1995, requesting postponement of the application to allow the applicant to submit revised plans for review by the Zoning Administrator.

At the hearing of May 10, 1995, the Board considered the request and granted a postponement of the case indefinitely.

On April 10, 1996, the applicant submitted a revised application requesting variance relief as follows:

- 1) a variance to allow an addition to an existing nonconforming structure that now exceeds the allowable percentage of lot occupancy requirements [2001.3(a) (b) and (c)];
- 2) a variance to abandon required parking (2100.10);

- 3) a variance from the allowable lot occupancy requirements (403.2);
- 4) a variance from the rear yard requirements (404.1); and
- 5) a variance from the minimum area of a closed court (406.1).

In their prehearing statement the applicants stated that a parking variance is no longer required for the property because it is located in an historic district and a waiver has been issued.

SITE DESCRIPTION AND PROPOSAL:

The subject site is located on the north side of E Street, S.E., between 8th and 9th Streets, and consists of one lot of record (Lot 804) containing 1,997.67 square feet of land area. The lot has a width of 21.48 feet and a depth of 93 feet. It is improved with a one-, two- and three-story masonry single-family row dwelling and a one-story masonry garage at the rear. An 18.15-foot wide closed court (312.72 square feet) is located on the east side of the dwelling. The property has an existing lot occupancy of 75 percent (1,488.55 square feet) and abuts a 30-foot wide public alley at the rear (north). The site is located in the Capitol Hill Historic District and is a contributing historic property.

The applicants are proposing to convert an accessory rear yard garage into a residential apartment. A covered walkway from the garage to the row dwelling would also be constructed along the site's western property line. The conversion of the garage would eliminate the existing on-site parking.

Because the garage would be connected to the main dwelling by a covered walkway, the two structures would be deemed one building, a flat, for zoning purposes. The respective footprints of the garage and dwelling would remain unchanged. The 11-foot high garage, however, would be increased in height by 4 feet at the rear portion of the structure along the alley. The front sloping portion of the garage would remain at 9.5 feet in height.

The garage wall fronting the alley would be completely replaced because of its dilapidated condition. The new masonry wall would consist of a new entrance on its east side and two glazed glass block windows. The proposed renovation would also replace and restore the garage wall which faces the rear yard and the dwelling. Overall, the proposal has been approved in concept by the Historic Preservation Review Board (HPRB).

The main dwelling and garage occupy 1,477.55 square feet (75 percent) of the subject lot. The dwellings has a footprint of 1,178.55 square feet, while the garage's footprint is 310 square feet. The addition of the covered walkway would increase the lot occupancy by 2 percent to 1,545.93 square feet, for a total lot occupancy of 77 percent. As noted previously, the R-4 zone allows a maximum lot occupancy of 60 percent.

The Zoning Regulations require a minimum rear yard depth of 20 feet in the R-4 zone district. The existing depth of the property's rear yard is 38.66 feet (from the dwelling's rear wall to the rear property line). Approximately 21.43 feet of the rear yard depth is occupied by the garage. This reduces the open usable rear yard depth to 17.23 feet. The proposed conversion of the garage to a residential unit, while not directly affecting the rear yard or the potential use of the yard, would technically result in the rear yard being counted from the back of the garage (because it would be part of the house) rather than from the back of the current house.

The land area between the dwelling and the garage is considered to be a closed court for zoning purposes under the proposed plan. The existing open area between the two structures is 21.48 feet wide and 17.23 feet deep (370 square feet). The proposed covered walkway would reduce the width of the rear yard to 18.23 feet. As a result, the area of the proposed closed court would be 314.1 square feet, as opposed to the 350 square-foot R-4 zone requirement.

ISSUES AND ARGUMENTS:

1. Whether there exists a unique or exceptional situation or condition which creates a practical difficulty for the owners in making reasonable use of the property?

UNIQUENESS AND EXCEPTIONAL CONDITIONS:

The applicants stated that they purchased the property in 1976 and live there with their two children. They stated that they propose to continue living in the main house and convert the garage to a second dwelling unit for use by their college-age daughter.

The applicants argued that the subject site is unique and affected by exceptional conditions in the following ways:

- A. The Zoning Regulations enacted in 1958 rendered the existing property non-conforming with respect to lot occupancy, creating a practical difficulty for the owner.

The existing house was constructed in 1880, with several rear additions completed by 1931. The garage was constructed that year, in compliance with the zoning regulations in effect at that time. At the time, the property was located in a commercial zone, and the buildings were permitted to cover 1,648 square feet of space, or approximately 80 percent of this particular lot. When the current zoning regulations took effect on May 12, 1958, however, the property was re-classified residential in an effort to stabilize those properties still used as dwellings. Consequently, it was rendered non-conforming with respect to lot occupancy.

The applicants stated that in numerous cases, the Board has found that such a condition is one element demonstrating a practical difficulty upon the owner. In BZA Order No. 13162, the Board found that "the non-conformity of the lot size and percentage of lot occupancy at the time of the adoption of the Zoning Regulations creates such a practical difficulty" on the owner that variance relief from the prohibition against an addition to a non-conforming structure and the lot occupancy requirements should be granted. The variance allowed the construction of a rear deck on a house used as a flat in the R-4 zone district on Capitol Hill. The Board reached a similar conclusion in BZA Order No. 14689 which allowed for the construction of a kitchen bay on a Capitol Hill house in the R-4 zone district. In that case, the pre-existing non-conformity of the subject property created the same practical difficulty.

- B. The subject property is unique by virtue of the various sizes and shapes of lots surrounding the property and the unusual alley system in the square.

The applicants stated that although Square 925 was uniformly subdivided when the city was laid out, over the past two centuries it has evolved into a collection of haphazard lot sizes and building configurations. The square was developed during the mid- to late-nineteenth century, prior to any zoning regulations governing minimum lot sizes and required open areas. Consequently, there has been no consistency in lot sizes. The modified alley system creates unusual configurations to the square as well. At one time 30 feet wide, the eastwest alley has been reduced to a 15-foot width at either end, but remains 30 feet wide in a small central portion of the square. A 30-foot alley stub projects from the center of the square to north. The combination of the unusual alley configuration and the dramatic differences in lot sizes a unique situation for the properties in Square 925. At best, only seven lots are the same shape and none are the same size. This contrasts sharply with the orderly subdivision practices used for rowhouse development found elsewhere on Capitol Hill and in other residential neighborhoods in the city. Immediately surrounding the

subject site are squares developed during the same period but which are generally far more orderly in their lot sizes and configurations. Thus, these random and haphazard development patterns in Square 925 create unique and unusual conditions for the subject property.

- C. The "split-zoning" of Square 925 into the R-4 and C-2-A zone districts places the subject property in close contact with commercial uses, thereby creating an unusual and exceptional condition not experienced by the majority of other residential property on Capitol Hill.

The applicants stated that Square 925 is bounded on the north by Pennsylvania Avenue and 8th Street on the west, both of which are characterized by their commercial uses. Although Square 925 was at one time primarily residential, particularly during the late- nineteenth and early twentieth centuries, when the first zoning ordinance was enacted the entire block was zoned for commercial use. In an effort to protect the existing dwellings in the square and to prevent further commercial encroachment, the square was "split-zoned" when the current zoning regulations were adopted in 1958. The deleterious effect of the prior zoning classification had already taken hold, however, leaving only one-quarter of the square as residential use.

While other squares on Capitol Hill are also "split-zoned," the majority of the area is located in the R-4 or R-5-B zone districts. Of the approximately 243 squares located within the boundaries of Advisory Neighborhood Commission 6B, only 39 squares or 16 percent, are "split-zoned" for commercial and residential uses. Of these 39 squares, only seven squares, or three percent of all squares in ANC6B, are dominated by commercial uses:

	<u>Number</u>	<u>Percentage</u>
ANC6B Squares (Approx.)	243	100%
ANC6B Squares Split-Zoned (Comm/Res)	39	16%
Residential - 50%	32	13%
Commercial - 50%	7	3%

Square 925 is one of those city blocks where more than half of the area is zoned for commercial use. The predominance of commercial uses in these seven blocks creates an exceptional and extraordinary condition for the residential properties that strive to maintain a separate and distinct residential character.

This is particularly true for the subject site. The rear of the property faces a gas station and a firehouse. At one time, there were several garages along the alley but commercial uses have eliminated all but four of them. None, however, appear to be used

for automobiles. The former garage at 812 E Street, N.W., has been converted so that there is only a pedestrian entrance from the alley and no garage doors. The others all appear to be used for storage. The subject garage structure has been used for storage for the past 20 years and the previous owner, a carpenter, used it as his workshop. Presently, the garage is in a dilapidated condition.

These factors - the changed character of the alley, the demolition of several garages, the lack a need for automobile storage, and the unique dominance of commercial uses in this "split-zoned" square - combine to create an exceptional and unusual condition for the subject property.

- D. The unique architectural features of the garage constitute an exceptional condition of the subject property.

The applicants argued that the unique architectural features of the subject property, and the garage in particular, also constitute an exceptional condition which must be considered in evaluating the need for variance relief. The Italianate design of the garage elevation facing into the property matches the historic architectural treatment of the main house, creating a unique residential image to the structure which is not found on other properties in the square or in the area. Its origins are unclear and present an architectural curiosity. While the building permit for the garage was issued in 1931, the Italianate style used on the side of the garage usually dates from the mid- to late-nineteenth century in Washington. The alley elevation, however, is clearly from the twentieth century.

The applicants pointed out that the staff of the Historic Preservation Review Board noted the unusual architectural character of the garage structure in its recommendation to the HPRB to approve the proposed changes in concept. The staff report, dated December 15, 1994, states that "[w]hile the building has an ordinary garage door and vertical board siding facing the alley, it has a much more residential image on the property elevation due to an unusual projecting Italianate bay window, a segmental arched window and a door." This unusual architectural feature on the garage structure creates an exceptional condition for the subject property.

Practical Difficulty

The applicant argued that the strict application of the Zoning Regulations would create practical difficulties for the applicants.

The applicants stated that because the property was built before the Zoning Regulations went into effect, it is nonconforming

and cannot be altered to comply with the current regulations. The main house and garage occupy approximately 75 percent of the lot, 15 percent more than is presently allowed.

The applicants further stated that the conversion of the garage into a dwelling unit will restore, stabilize and preserve the residential quality of the property and of the square generally. The changing character of the alley and surrounding properties no longer makes the structure suitable for automobiles, and in fact, it has not been used for that purpose for over 20 years. Of the four remaining garage structures in the block, all appear to have been converted to other uses.

The applicants argued that to require that the structure be maintained as a garage, when the exceptional conditions of the property and surrounding area no longer justify its use for that purpose, would create a practical difficulty upon them as owners. The structure has outlived its usefulness for automobiles, as have the other remaining garages in the square. Its conversion to a dwelling unit, on the other hand, is appropriate for the property and will stabilize the residential portion of a square that is dominated by commercial uses. The unique architectural treatment and residential image of the structure makes it particularly suited for this conversion.

Moreover, the applicants stated, the conversion will allow them to provide the space necessary to accommodate their professional work and their family. They noted that they are both archaeologists with extensive libraries and collections of artifacts that continue to expand. They share the property with their two children, a college-age daughter and a son in high school. They would like their daughter to return to the family house upon graduating from college, but would also like to provide her with the privacy and independence she deserves. They argued that conversion of the garage presents an ideal solution to accommodate the needs of the entire family.

The applicants stated that if they cannot convert the garage, they would need to relocate and this would be a great hardship on them. They stated that they could not afford to live in the District of Columbia even if a house that is large enough were available to them. Moreover, they stated that they are committed to the Capitol Hill neighborhood and do not want to leave the City.

The applicant's architect testified that other areas of the house cannot be used for various reasons. An addition cannot be made to the third floor because the sunroom has no structure to build upon. It has a corrugated plexiglass ceiling. Also, the resulting configuration of such an addition would have a very long 14-foot wide corridor like effect. If a corridor is placed in this

area, it would effectively reduce use of the space. Furthermore, she testified that there is only a single stair and it would not give the applicant's daughter any privacy.

The architect testified that the basement cannot be converted into habitable space because there is no access from the exterior. She noted that the basement does not even extend to the rear of the building. In addition, the basement has no light or air.

The architect concludes that they are effectively barred from doing what might normally be done to an existing structure.

By memorandum dated November 1, 1996, and through testimony at the hearing, the Office of Planning (OP) recommended denial of the application. On the issue of practical difficulty, OP stated that it has not been able to establish that there is a practical difficulty inherent in the physical characteristics of the property, that would interfere with the owner's ability to reasonably develop and use the subject property. OP stated that the property is similar to surrounding properties in its physical characteristics and does not appear to be affected by any extraordinary or exceptional situation or condition that would justify the granting of the requested zoning relief.

With regard to the parking exemption alleged by the applicants the Office of Planning stated that according to the Zoning Administrator's office, no parking waiver has been granted for this site. This is because the property has not been designated as an historic landmark.

The Capitol Hill Restoration Society (CHRS) testified at the hearing in opposition to the application. The CHRS is of the view that the applicants have failed to demonstrate that a practical difficulty exists related to this property. CHRS maintains that the applicant has not shown why the building cannot be used as a garage for storage or parking. CHRS argues that other variance cases for properties in the area should be construed to support the proposition that nonconformity in and of itself does not constitute practical difficulty.

2. Would granting the requested relief be of substantial detriment to the public good?

The applicant maintain that the variance will not cause substantial detriment to the public good. They noted that while other additions to the house may be possible, they would add far more mass and height to the house and would impinge on their neighbors' property. They maintain that the proposed solution is the least disruptive to the adjacent properties and involves only the slightest changes to the garage structure.

The applicants stated that they have consulted their neighbors about the project and they have no objections.

Advisory Neighborhood Commission (ANC) 6B, by letter dated October 29, 1996 expressed its support for the application.

The Historic Preservation Review Board (HPRB) by letter dated November 25, 1996, responded to a request from the applicant's architect for an opinion on the proposed garage conversion and the alternative proposal to construct a third story addition at the rear of the main house. The HPRB expressed a preference for the garage conversion because it would have the least negative impact on the house and the historic district. The HPRB stated that the adaptive reuse of the garage to residential use would not have any negative impact on the house or historic district, and would return this historic building to active use.

On the other hand, the HPRB believed that the alternative plan would add unnecessary bulk to the rear yard which would be detrimental to the surrounding neighbors' rear yard light and air, and would be quite visible from the street.

The HPRB also expressed its opposition to demolition of the garage because they consider it a contributing structure to the historic district. It is an unusual residentially-scaled buildings with a projecting Italianate bay window, a segmental arched window, and a door on its southern elevation. Therefore, they would oppose its demolition.

3. Would granting the application impair the intent, purpose or integrity of the Zoning Regulations and Map?

The applicants stated that the variance relief requested will not impair the intent, purpose or integrity of the Zoning Regulations. They stated that the proposed use of the property as a two-family flat is permitted in the R-4 zone. The conversion of the property from a single-family dwelling to a flat will not require any changes in the configuration of the property or in the footprint of the buildings. The conversions, however, will change the rear yard calculations and create a closed court despite the lack of changes to the physical layout of the site. While the rear yard depth is reduced below that which is permitted under the zoning regulations, the same amount of open space will be available to the property. The applicants maintain that because of the modest nature of the proposed changes, the intent, purpose and integrity of the Zoning Regulations would not be impaired.

In its report, OP pointed out that the property is already nonconforming. Because of the amount of zoning relief needed in this case, the Office of Planning believes that the approval of

this application would impair the intent, purpose, and integrity of the R-4 zone district regulations.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

(1) The subject property can reasonably be used for the intended purpose, that is, as a single-family residence, without relief from the Zoning Regulations.

(2) The garage structures at the rear of the site can be used for parking or storage.

(3) The applicants are not exempt from the requirement to provide off-street parking since the property has not been designated as "an historic landmark" by the HPRB.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicants are seeking variance relief to allow them to convert an existing house and garage into a two unit flat. Granting such variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board is of the opinion that the owners are not faced with a practical difficulty in making reasonable use of their property. The main structure can be used as a residential dwelling and the garage can be used for storage or parking. The Board concludes that the nonconforming nature of the property does not prevent the owners from making reasonable use of it. The Board believes that the requested conversion would be for the applicants' convenience and not due to any practical difficulty related to the property itself.

Having concluded that the application fails to meet the practical difficulties test, the Board concludes that it is unnecessary to address the other elements if the variance test, i.e., impact on the public and impairment of the zone plan.


In light of the foregoing, the Board **ORDERS** that the application is hereby **DENIED**.

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VOTE: 3-0 (Angel F. Clarens, Laura M. Richards and Sheila Cross Reid to deny; Susan Morgan Hinton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER:

JUN 26 1997

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16037

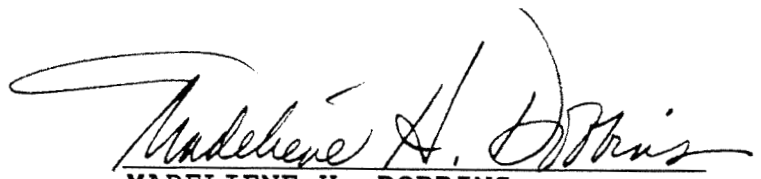
As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 26 1997 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. DOBBINS
Director

DATE: JUN 26 1997